

[From the New York Times, June 13, 1998]
G.O.P., ITS EYES ON HIGH COURT, BLOCKS A
JUDGE

(By Neil A. Lewis)

WASHINGTON, June 12—Judge Sonia Sotomayor seemed like a trouble-free choice when President Clinton nominated her to an appeals court post a year ago. Hers was an appealing story: a child from the Bronx housing projects who went on to graduate summa cum laude from Princeton and become editor of the Yale Law Journal and then a Federal prosecutor.

Moreover, she had been a trial judge since 1992, when she was named to the bench by the last Republican president George Bush.

But Republican senators have been blocking Judge Sotomayor's elevation to the appeals court for a highly unusual reason: to make her less likely to be picked by Mr. Clinton for the Supreme Court, senior Republican Congressional aides said in interviews.

The delay of a confirmation vote on Judge Sotomayor to the United States Court of Appeals for the Second Circuit, based in New York, is an example of the intense and often byzantine political maneuverings that take place behind the scenes in many judicial nominations. Several elements of the Sotomayor case are odd, White House officials and Democrats in Congress say, but the chief one is the fact that there is no vacancy on the Supreme Court, and no firm indication that there will be one soon. Nor is there any evidence of a campaign to put Judge Sotomayor under consideration for a seat if there were a vacancy.

Judge Sotomayor's nomination was approved overwhelmingly by the Senate Judiciary Committee in March. Of the judicial nominees who have cleared the committee in this Congress, she is among those who have waited the longest for a final vote on the floor.

Senate Republican staff aides said Trent Lott of Mississippi, the majority leader, has agreed to hold up a vote on the nomination as part of an elaborate political calculus; if she were easily confirmed to the appeals court, they said, that would put her in a position to be named to the Supreme Court. And Senate Republicans think that they would then have a difficult time opposing a Hispanic woman who had just been confirmed by the full Senate.

"Basically, we think that putting her on the appeals court puts her in the batter's box to be nominated to the Supreme Court," said one senior Republican staff aide who spoke on the condition of anonymity. "If Clinton nominated her it would put several of our senators in a real difficult position."

Mr. Lott declined through a spokeswoman to comment.

Judge Sotomayor sits on Federal District Court in Manhattan, and the aides said some senators believe that her record on the bench fits the profile of an "activist judge," a description that has been used by conservatives to question a jurist's ability to construe the law narrowly. It is a description that Judge Sotomayor's supporters, including some conservative New York lawyers, dispute.

Senator Patrick Leahy of Vermont, the senior Democrat on the Judiciary Committee, was blunt in his criticism of the Republicans who are blocking a confirmation vote. "Their reasons are stupid at best and cowardly at worst," he said.

"What they are saying is that they have a brilliant judge who also happens to be a woman and Hispanic, and they haven't the guts to stand up and argue publicly against her on the floor," Senator Leahy said. "They just want to hide in their cloakrooms and do her in quietly."

The models for the strategy of putting candidates on appeals courts to enhance their stature as Supreme Court nominees are Judge Robert H. Bork and Judge Clarence Thomas. Both were placed on the Court of Appeals for the District of Columbia Circuit in part to be poised for nomination to the Supreme Court. Judge Bork was denied confirmation to the Supreme Court in 1987 and Judge Thomas was confirmed in 1991, in both cases after bruising political battles.

The foundation for the Republicans's strategy is based on two highly speculative theories: that Mr. Clinton is eager to name the first Hispanic person to the Supreme Court and that he will have such an opportunity when one of the current justices, perhaps John Paul Stevens, retires at the end of the current Supreme Court term next month.

Warnings about the possibility of Judge Sotomayor's filling Justice Stevens's seat was raised by the Wall Street Journal's editorial pages this month, both in an editorial and in an op-ed column by Paul A. Gigot, who often reflects conservative thinking in the Senate.

Although justices often announce their retirements at the end of a term, Justice Stevens has not given a clue that he will do so. He has, in fact, hired law clerks for next year's term. The Journal's commentary also criticized Judge Sotomayor's record, particularly her March ruling in a case involving a Manhattan business coalition, the Grand Central Partnership. She rules that in trying to give work experience to the homeless, the coalition had violated Federal law by failing to pay the minimum wage.

Gerald Walpin, a former Federal prosecutor who is widely known in New York legal circles as a staunch conservative, took issue with the Journal's criticism.

"If they had read the case they would see that she said she personally approved of the homeless program but that as a judge she was required to apply the law as it exists," he said. "She wrote that the law does not permit an exception in this case. That's exactly what conservatives want: a nonactivist judge who does not apply her own views but is bound by the law." Mr. Bush nominated Judge Sotomayor in 1992 after a recommendation from Daniel Patrick Moynihan, New York's Democratic Senator.

It also remains unclear how some Senate Republicans came to believe that Judge Sotomayor was being considered as a candidate for the Supreme Court. Hispanic bar groups have for years pressed the Clinton Administration to name the first Hispanic justice, but White House officials said they are not committed to doing so. The Hispanic National Bar Association has submitted a list of six candidates for the Supreme Court to the White House. But Martin R. Castro, a Chicago lawyer and official of the group, said Judge Sotomayor's name is not on the list.

The only Republicans to vote against her in March were Senator John Kyl of Arizona and Senator John Ashcroft of Missouri. The committee's other conservative members, including Orrin G. Hatch of Utah and Strom Thurmond of South Carolina, voted in her favor. Mr. Kyl and Mr. Ashcroft both declined to comment today.

[From the Washington Post, June 13, 1998]

UNPACKING THE COURT

The saga of the North Carolina seats on the U.S. Court of Appeals for the 4th Circuit is a caricature of the power individual senators have to hold up judicial nominations. In 1990 Congress added some seats to the 4th Circuit, including one for North Carolina, to this day—7½ years later—that seat remains vacant. The reason is a byzantine power play by Sen. Jesse Helms.

The first nomination to the ghost seat was made by President Bush in 1991. He picked a conservative district court judge and Helms favorite named Terrence Boyle. That nomination was dropped—much to Mr. Helms's fury—when Mr. Bush subsequently lost the 1992 election. Since then Mr. Helms has stymied President Clinton's efforts to fill the seat. When President Clinton named Rich Leonard to it late in 1995, Mr. Helms blocked the nomination, and the Senate never acted on it. With no prospect of success, the nomination was not resubmitted in the next Congress. What's more, since Judge Dixon Phillips Jr. took senior status in 1994 and thereby opened another North Carolina slot on the court, Mr. Helms has also blocked the administration's attempts to fill that seat. As a result, the president's choice—U.S. District Judge James Beaty Jr.—has been in limbo for 2½ years without getting even a hearing. Mr. Helms has not even indicated to the administration what sort of nominees might be acceptable.

Mr. Helms has argued in talks with the administration that the court needs no more judges—a point on which he is, ironically, supported by the 4th Circuit's own conservative chief judge, Harvie Wilkinson III. Mr. Helms, however, was making no such argument when Judge Boyle was up for the slot. And it's a bit difficult to imagine him making the same point now were the president's nominees not likely to add a little ideological—and, for that matter, ethnic—diversity to one of the most conservative courts in the country. Mr. Clinton's nominees would, indeed, change the 4th Circuit—which covers Maryland, Virginia, South Carolina, West Virginia and North Carolina—and the arch-conservative senator cannot be required to relish this prospect.

But ultimately the Constitution gives the president, not individual senators, the power to name judges. And Mr. Helms's effort to keep the court conservative by keeping it small is an improper aggrandizement of his own role.

Mr. LEAHY. Mr. President, if I have time left, I yield it back. I yield the floor.

THE VERY BAD DEBT BOXSCORE

MR. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 17, 1998, the federal debt stood at \$5,491,718,359,124.33 (Five trillion, four hundred ninety-one billion, seven hundred eighteen million, three hundred fifty-nine thousand, one hundred twenty-four dollars and thirty-three cents).

One year ago, June 17, 1997, the federal debt stood at \$5,329,352,000,000 (Five trillion, three hundred twenty-nine billion, three hundred fifty-two million).

Five years ago, June 17, 1993, the federal debt stood at \$4,296,788,000,000 (Four trillion, two hundred ninety-six billion, seven hundred eighty-eight million).

Ten years ago, June 17, 1988, the federal debt stood at \$2,526,239,000,000 (Two trillion, five hundred twenty-six billion, two hundred thirty-nine million).

Fifteen years ago, June 17, 1983, the federal debt stood at \$1,303,759,000,000 (One trillion, three hundred three billion, seven hundred fifty-nine million) which reflects a debt increase of more than \$4 trillion—\$4,187,959,359,124.33

(Four trillion, one hundred eighty-seven billion, nine hundred fifty-nine million, three hundred fifty-nine thousand, one hundred twenty-four dollars and thirty-three cents) during the past 15 years.

BUILDING A BETTER WORLD AWARD

Mr. CAMPBELL. Mr. President, today I take a moment to acknowledge the new "Building a Better World" Award which CH2M HILL, an employee-owned company which is headquartered in Denver, has initiated. William D. Ruckelshaus, Chairman of BFI and former EPA Administrator, was presented with CH2M HILL's inaugural "Building a Better World" award in ceremonies at the Smithsonian Institution's Castle in Washington, DC on May 6, 1998.

CH2M HILL created this award to recognize the contributions of private citizens or organizations that reflect the company's core business value of making technology work to build a better world. The work of its 7,000 employees worldwide involves assisting public and private sector clients in planning, design, program management, and often construction for drinking water, wastewater management, hazardous waste management, transportation, nuclear waste cleanup projects, and industrial activities.

In choosing a recipient for this inaugural award, the selection panel sought to define a level of excellence that would make this award especially significant to succeeding recipients. Three key criteria are established for CH2M HILL's "Building a Better World" award:

Honorees must be deemed to have made a significant difference in improving the lives and prospects of people and society.

Contributions of honorees must be judged to be exceptional in nature and their impact substantial, distinctive and enduring.

Honorees must demonstrate an extraordinary and exemplary exercise of leadership and commitment.

In honoring Mr. Ruckelshaus with the "Building a Better World" award, CH2M HILL noted his long standing and continuing efforts in advancing environmental protection, practicing corporate responsibility, affecting sustainable development, and inspiring dynamic public and private citizenship. "Taken apart from one another, Mr. Ruckelshaus' accomplishments in business leadership, government service and environmental stewardship are extraordinary in their own right" said Ralph R. Peterson, CH2M HILL President and CEO. "Taken collectively they form a masterwork of civic character."

In establishing the "Building a Better World" award, CH2M HILL plans to honor people it knows firsthand to have made constructive, significant and lasting contributions to improving

the lives and prospects of people and society. The award will be presented on a regular basis as deemed appropriate by the CH2M HILL Board of Directors.

Mr. President, this special award by a leading Colorado-based company provides another example of corporate interest and support for making the world we live in a better place.

I thank the chair and yield the floor.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 2138) making appropriations for energy and water development for the fiscal year ending September 30, 1999.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I will shortly be sending an amendment to the desk. Let me just explain to my colleagues what it is I am attempting to do.

This is not the first time I have been on the floor of the Senate talking "trash," not the kind of trash that immediately comes to mind when you use that phrase but trash meaning garbage. In fact, another Senator just came by a few minutes ago and said, "This amendment you are offering is garbage." I said, "You are exactly right; it is garbage." It is all about garbage. It is all about municipal solid waste, which is a diplomatic term for garbage, the stuff that each of us throws out every day from our kitchen—puts in a plastic bag, puts out at the curb once or twice a week, picked up by a local truck and taken to what we think is a local landfill nearby.

Unfortunately, the State I come from, Indiana, has become the local landfill for a number of States that do not have enough landfill capacity or find it cheaper to load it on a train, load it on a truck, send it overnight down our Nation's railways or highways, and drop it off in the State of Indiana. Over the past several years, we have been the recipient of millions upon millions upon millions of tons of out-of-State trash without any ability as a State to put reasonable restraints and restrictions on receipt of that out-of-State trash in order to manage our environment and manage our own destiny in terms of how we dispose of this municipal solid waste.

The Supreme Court has denied States their individual efforts to regulate this, saying that it is a violation of the commerce clause of the Constitution. But the courts have also been clear to point out the fact that if Congress affirmatively enacts legislation or constraints on the importation of out-of-State trash, or exportation of out-of-State trash, it will be constitutionally acceptable. It is just simply one of those areas where States cannot do it

individually but Congress can give them the authority to do that.

We have learned a lot of things over the last several years. I have offered this legislation now five times. This is the sixth. We offered it in 1990, 1992, 1994, 1995, and in 1996, and in each of those years the Senate has passed this legislation. We now come here for the sixth time because we have been unable to secure passage in the other House, or, when we have, it has been dropped in conference. Various other means have been used to defeat the purpose of finally accomplishing what I believe is a reasonable restraint and reasonable solution to the problem that we face.

Now, Michael Jordan and the Chicago Bulls have won six titles. This is my sixth try to win one. I have five defeats, and I hope not to get the sixth defeat. So that we have Jordan and the Bulls on the one hand carrying around the trophy with astounding success, and we have Coats on the other hand loaded up with bags of trash brought in from out of State marked X defeat in 1990; X defeat in 1992; X defeat in 1994, et cetera, et cetera.

Now, I cannot blame my colleagues in the Senate. I cannot do that because through negotiation each time we have been able to work out our differences. We have been able to recognize that there are exporting States that have needs and there are importing States that have problems, and that finding a solution that merely benefits the importing States puts the exporting States in a very difficult position.

So with the help of my friend from New York, Senator D'AMATO, and the help of my friends, on a bipartisan basis we have been able to reach an accommodation which recognizes the need for importing States to have to have reasonable restraints on the amount that they can handle and at the same time gives those exporting States time to put in place mechanisms of their own to deal with their trash or to enter into arrangements with our State so that we can have some type of reasonable control over that.

We have learned those lessons, sometimes the hard way, but we have always been able to reach an agreement and a consensus, and the Senate has been tremendously supportive in the end of my efforts to do this. I am disappointed that we have not had that same kind of support in the House of Representatives. I hope we can as we try once again to convince our colleagues that this is a problem that needs a solution, that we have a solution that takes care of the problems that are facing importing States as well as exporting States.

The amendment I am going to offer today is the interstate solid waste title of S. 534, which passed twice in the last Congress. That title was carefully negotiated. What we are offering is that title in its entirety with a minor modification. We are even now negotiating that modification as I speak.